Supreme Court, U.S.
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No. 01-1068

In The

# Supreme Court of the United States

JAMES HENDERSON,

*Petitioner,*

v.

GENERAL AMERICAN LIFE INSURANCE COMPANY, *et al.*,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit**

## REPLY BRIEF

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## REASONS FOR GRANTING THE WRIT

Respondents' brief in opposition to the Petition for Certiorari is misleading. It is immaterial whether Petitioner challenged the District Court's denial of his motion to intervene in his appeal to the Eighth Circuit. The issue in this Petition is exactly the same as in *Devlin* – whether intervention must be obtained by an absent class member who objects to a class action settlement to have standing to appeal. Petitioner, like the petitioner in *Devlin*, is urging this Court to adopt the position of the Second, Third, and Ninth Circuits in *Kaplan vs. Rand*, 192 F.3d 60, 67 (2d Cir. 1999); *Carlough vs. Amchem Products*, 5 F.3d 707, 710 (3d Cir. 1993) and *Marshall vs. Holiday Magic, Inc.*, 550 F.2d 1173, 1176 (9th Cir. 1977), which do not require intervention to confer standing on a class member to appeal an order approving a class action settlement. See Petition, p. 8. In fact, in *Kaplan*, the Appellant class member was granted standing to appeal the settlement as an objector even though he had not even **moved** to intervene in the District Court. *Kaplan*, 192 F.3d at 67.

In this respect, the instant Petition is identical to *Devlin*. Should this Court accept the arguments urged by the Petitioner in *Devlin*, intervention in the District Court would not be necessary for appellate standing. The Eighth Circuit would therefore be required to address the **merits** of the appeal even though Petitioner did not raise the issue of intervention in his initial brief to the Eighth Circuit.

Likewise, the same arguments apply to Petitioner's request for plenary review, as an alternative to holding this Petition pending this Court's decision in *Devlin*. It is

illogical to require the Petitioner to have appealed the denial of his motion to intervene in the lower appeal if this Court adopts the rule of the Second Circuit which would not even require Petitioner to **move** for intervention. Put differently, if there were no intervention requirement, the Eighth Circuit would have reached the merits of Petitioner's appeal, just as is the case in *Devlin*, if the Petitioner there had not been burdened with the intervention requirement.

## CONCLUSION

This Petition should be held pending this Court's decision in *Devlin* and disposed of in a manner consistent with that decision; otherwise the Court should grant the Petition for plenary review.

Respectfully submitted,

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